Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Assessment and Collection of Regulatory Fees for Fiscal Year 2008	)	MD Docket No. 08-65 RM No. 11312

REPLY COMMENTS OF TELSTRA INCORPORATED

Telstra Incorporated ("Telstra"), by its attorneys, hereby submits these reply comments in the above-captioned proceeding regarding the International Bearer Circuits Fee ("IBCF"). In addition to holding an international Section 214 authorization, Telstra recently received a cable landing license for the non-common carrier Sydney-Hawaii Cable System.[1] Telstra therefore has a direct interest in the Commission's decision whether and how to modify the IBCF rules.

On February 6, 2006, Tata Communications (US) Inc., f/k/a VSNL Telecommunications (US) Inc., filed a rulemaking petition asking the Commission to adopt rules which, among other things, would replace the capacity-based IBCF on non-common carrier submarine cable operators with a per-system fee.[2] In comments filed with the Commission on May 30, 2008 in this proceeding, certain parties supported a per-system fee for non-common carrier submarine cable operators, and seven cable systems endorsed a Joint Proposal explaining how a per-system fee could

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1 *See Public Notice*, DA No. 08-1080, Report No. SCL-00061, released May 7, 2008 (SCL-LIC-20070621-0009).

2 *See* Petition for Rulemaking, RM-11312, filed by VSNL Telecommunications (US) Inc. on Feb. 6, 2006.

be implemented.[3] Telstra does not take a position in these reply comments on whether the Commission should adopt a per-system fee, although Telstra agrees with the Joint Proposal that any per-system fee should not apply to licensed systems before they are in commercial service.

In the event the Commission adopts a per-system IBCF for non-common carrier submarine cable operators, Telstra respectfully submits that the Commission should establish a two-year ramp-up period for newly-licensed systems. In particular, Telstra submits that for newly-licensed systems, the IBCF should be 33% of the per-system fee in the first year and 67% of the per-system fee in the second year.

This two-year ramp-up period is justified because loading a new cable system with customers is a time-consuming process. Non-common carrier submarine cable operators typically sell capacity in relatively large increments, and such transactions do not occur with sufficient frequency to permit the operator to load its system quickly. In most cases, it takes a period of at least several years for an operator to develop a robust customer base. In this case, the per-system IBCF is likely to be sufficiently large that it would impose a hardship on a newly-licensed system to pay the fee in full while its system is still largely idle and not generating significant revenues. By contrast, established systems can mitigate the impact of the fee by spreading it over a larger customer base. Particularly given the well-recognized trends of declining capacity prices and shrinking profit margins in the submarine cable industry, a two-year ramp-up period is a necessary accommodation to market realities.

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3 *See* Joint Proposal, MD Docket No. 08-65, RM-11312, filed on May 30, 2008 by Level 3 Communications, LLC; Brasil Telecom of America, Inc.; Columbus Networks USA, Inc.; ARCOS-1 USA, Inc., and A.SUR Net, Inc.; Hibernia Atlantic US LLC; and Pacific Crossing Limited and PC Landing Corp.; *see also* Comments of Tata Communications (US) Inc., MD Docket No. 08-65, RM-11312, May 30, 2008.

Imposing the full per-system IBCF on a newly-licensed system at the outset would have undesirable consequences from a public interest perspective. Initially, it would have a chilling effect on the willingness of carriers or large users to consider building new submarine cable infrastructure that lands in the United States. They would either not build new cables, or they would consider landing them in other countries. Further, forcing new systems to pay the full IBCF immediately would put those systems at a material competitive disadvantage in a market segment characterized by intense competition. While established systems would have the customer base and revenue stream to more readily absorb the fee, a newly-licensed system would not have such a cushion and it would be faced with the dilemma of choosing between (i) increasing its prices to recoup the fee, thereby making its products less competitive and flattening its growth curve, or (ii) paying the fee out of its own pockets, thereby lengthening the road to profitability. In order to avoid these adverse results, the Commission should phase-in the per-system IBCF over a two-year period.

Also, it should be noted that under the current capacity-based regime, this problem does not arise. A newly-licensed system would only have to pay the IBCF on active circuits, which would result in lower payments during the initial years when the system is being loaded. Hence, the proposed ramp-up period would mitigate the adverse impact on newly-licensed systems of migrating the submarine cable industry to a new per-system IBCF regime.

For the foregoing reasons, in the event the Commission adopts a per-system IBCF for non-common carrier submarine cable operators, Telstra respectfully urges the Commission to adopt a two-year ramp-up period for newly-licensed systems.

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CERTIFICATE OF SERVICE

I, Tara Mahoney, hereby certify that on this 6th day of June, 2008, copies of the foregoing Reply Comments of Telstra Incorporated was served upon each of the following by electronic mail.

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